

GAHC010081722021



AS:11549-DB

2024:GAU-

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Ref./1/2021

XXX
GUWAHATI, ASSAM

VERSUS

IN RE - STATE OF NAGALAND AND ANR
REPRESENTED BY THE CHIEF SECRETARY, NAGALAND CIVIL
SECRETARIAT, KOHIMA - 797001

2:THE DIRECTOR GENERAL OF POLICE
NAGALAN

Advocate for the Petitioner : MR. T J MAHANTA, SR. ADV,

Advocate for the Respondent : MS. T KHRO,

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellant : Shri TJ Mahanta, Sr. Counsel,
Ms. P Das, Advocate.

For the Respondents : Ms. T Khro, Addl. AG, Nagaland.

Date of Hearing : 07.11.2024.

Date of Judgment : 25.11.2024.

Judgment & Order

25.11.2024

(SK Medhi, J)

The present Reference has been made under Section 395 of the Cr.PC by the learned Judicial Magistrate First Class, Tuensang on the following question of law:

“1. Whether a Magistrate (in police registered warrant procedure case), can drop/stop proceedings at the stage of taking cognizance against an accused in the NLTP Act cases, since there is an express bar for taking cognizance except upon 'a complaint' made by the Director of prohibition or an officer authorised by him under Section 43 of the Act?”

2. The matter arises out of 9 nos. of GR cases which were registered in connection with the Nagaland Liquor Total Prohibition Act, 1989 (Act of 1989). The said cases had emanated from FIRs registered by the police based on certain information and after completion of the investigation, charge sheets were filed. After filing of the charge sheets, the learned Magistrate, by referring to Section 43 of the Act of 1989 has expressed a predicament whereby cognizance of offence under the said Act was not to be taken unless a complaint was made by the persons authorized in that behalf. At the same time, the

learned Magistrate had also expressed a predicament regarding the stoppage or dropping of the proceedings which was permitted only under Section 258 of the Cr.PC pertaining to Summons Procedure cases. The learned Magistrate had observed that offences committed under Section 44 of the Act of 1989 were all Warrant Procedure cases. Under those circumstances, the learned Magistrate by order dated 05.03.2021 had made the present Reference. The said Reference was transmitted in the prescribed procedure.

3. We have heard Shri TJ Mahanta, learned Senior Counsel assisted by Ms. P Das, learned counsel appearing for the Gauhati High Court. We have also heard Ms. T Khro, learned Addl. Advocate General, Nagaland.

4. Shri Mahanta, learned Senior Counsel has submitted that the penalties prescribed for the offence in question are the Warrant Procedure cases and therefore, the learned Magistrate cannot exercise powers under Section 258 of the Cr.PC to stop the proceedings. He has submitted that admittedly, the initiation of the proceedings were by means of FIRs lodged by the police on certain information and not in the form of a complaint as required under Sections 42 and 43 of the Act of 1989. He submits that since Section 43 of the Cr.PC/Act lays down an embargo on the aspect of taking cognizance other than in the manner provided therein, no cognizance can be taken in the cases at hand.

5. Ms. T Khro, learned Addl. AG, Nagaland has submitted that an affidavit has been filed by the State on 30.11.2021 wherein, it has been stated that vide a notification dated 21.05.2012, the Excise Department has appointed the

Officer-in-Charge of all Police Stations under the Act of 1989 to function as Prohibition Officer under the Director of Prohibition, Nagaland. She has, however informed that there is some discussions on the issue regarding the aspect of prohibition in the State.

6. Before going to answer the Reference, it would be convenient, if the relevant provisions of the Act of 1989 are extracted hereinbelow:

“42. Offence to be Reported:-

Every officer of the State Government, and every officer or servant of a local authority, and the Gaon Hurrah or Assistant Gaon Hurrah of a village shall be bound;

- (a) to give immediate information at the nearest Police Station or to any officer or person authorised in this behalf of the commission of any offence and of the intention or preparation to commit any offence under this Act which may come to his knowledge;*
- (b) to take all reasonable measures in their power to prevent the commission of any such offence which they may know or have reason to believe is about or likely to be committed.*

43. Cognizance of Offence:-

No Court shall take cognizance of an offence under this Act unless a complaint in this regard is made by the Director of Prohibition or any officer authorised by him.”

7. Prohibition Officer has also been defined in the Act of 1989 which reads as follows:

“2(7) 'Prohibition officer' includes the Director or any officer or person appointed to exercise any of the powers or to perform any of the duties and function under the provisions of this Act and also includes any officer or person invested with any such powers and on whom any such functions or duties are imposed, and any member of a committee or board.”

8. Section 44 of the Act of 1989 is with regard to the penalties which read as follows:

“44. PENALTY FOR ILLEGAL IMPORT, ETC. OF LIQUOR:- Whoever, in contravention of the provision of this Act, or of any rule, regulation or order made or of any pass, permit or authorisation granted thereunder.

(a) imports or exports any liquor

(b) manufactures any liquor

(c) constructs or works any distillery or brewery;

(d) bottles liquor;

(e) sells or buys any liquor

(f) uses, keeps or has in his possession any materials, utensils, implements or apparatus for the purpose of manufacturing any liquor.

shall on conviction, be punished for each such offence

with imprisonment for a term which may extend to three years and also with fine;

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court-

- (i) for the first offence, such imprisonment shall not be less than six months, and fine shall not be less than five hundred rupees;*
- (ii) for a second offence, such imprisonment shall not be less than nine months, and fine shall not be less than one thousand rupees;*
- (iii) for third or subsequent offences, such imprisonment shall not be less than one year and fine shall not be less than two thousand rupees.”*

9. As per Section 44, the term of sentence may extend to three years which implies that the procedure involved in the trial would be a Warrant Procedure case.

10. The provision of Section 43 would make it clear that no Court shall take cognizance of an offence under the Act of 1989 unless a complaint was made by the Directorate of Prohibition or any officer authorized by him. As mentioned above, the Prohibition Officer has been defined under Section 2(7) which includes the Director of Prohibition. It becomes amply clear that the cognizance of an offence under the Act of 1989 can be taken only when such an officer or his authorized person makes a complaint. Section 44 of the said Act also makes it clear that the procedure involved would be a Warrant Procedure case.

11. Going by the aforesaid provisions of law, it becomes amply clear that when any offence under the said Act is not initiated by means of a complaint in the manner prescribed, no Court can take cognizance. In the instant case, there is no dispute that the initiation was done by FIRs lodged by the police officer upon certain information leading to investigation and filing of charge sheet. The said procedure is not recognized by the Act in question and therefore, the aspect of taking cognizance under Section 43 will not arise. The predicament which has been expressed by the learned Magistrate is with regard to Section 258 of the Cr.PC which reads as follows:

“258. Power to stop proceedings in certain cases. – In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.”

12. The learned Magistrate has made the following observation:

“So, when charge sheet are filed in statute prescribed complaint procedure cases, the Courts are hapless, whether to take cognizance of the offence and take the case forward for trial which would eventually end up in acquittal of the accused owing to procedural flaws or drop proceedings against the accused at the stage of taking cognizance. Section 258 of the Cr.PC empowers a Magistrate of First Class at any

stage, for reasons to be recorded in writing, to stop proceedings of a police registered cases in summons procedure cases.

However, the offences committed under Section 44 of the NLTP Act are all warrant procedure cases. Therefore, there is no law which empowers the Magistrate to stop proceedings when the Court observes apparent procedural flaws, that, despite an express bar on taking cognizance by the Magistrate except on a complaint lodged by the officials given in Section 43 of the NLTP Act, the police register an FIR and thereafter files a charge sheet.”

13. The power to stop proceedings in certain cases is confined only to Summons Procedure case instituted other than a complaint. Such power to stop proceedings can be exercised only when the preconditions laid down in the said section are met, namely that the case in hand has to be a summons case.

14. On the other hand, the cases before the learned Magistrate were Warrant Procedure cases. Before even going to the aspect as to whether powers can be exercised under Section 258 of the Cr.PC, it has to be examined as to whether the occasion would even arise to refer to the aforesaid provision of law, namely, Section 258 of the Cr.PC. The expression used in the aforesaid provision “at any stage” would have to mean a stage only after initiation of the proceeding. In the instance case, the proceeding can be said to be initiated only after a cognizance is taken by the learned Magistrate which is yet to be done. In fact, such cognizance can be taken only when the ingredients of Section 43 of the Act of 1989 are met which, in the instance case, have, admittedly not been fulfilled.

15. In the instance case, we are of the view that the question of stopping the proceedings under Section 258 of the Cr.PC would not even arise when cognizance itself, has not yet been taken. The learned Magistrate would be well within the provisions of law to pass an order of either dismissal of the case or rejection thereof as the same was not initiated in the manner prescribed under the Act of 1989.

16. With the following observations, the Reference stands answered and the matter be remitted back to the learned Magistrate to pass appropriate order(s) in consonance with the observations made above.

17. Send back the LCRs immediately.

JUDGE

JUDGE

Comparing Assistant